



December 27, 1999

Mr. Leonard W. Peck Jr.  
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Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR99-3759

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131070.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the internal report regarding an inmate's death. You claim that the requested information is excepted from required disclosure under sections 552.101, 552.108, and 552.131 of the Government Code and under section 552.107 in conjunction with *Ruiz*.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Sections 552.029 and 552.131, as added by Act of May 26, 1999, 76<sup>th</sup> Leg., R.S., ch. 783, §1, 1999 Tex. Sess. Law Serv. 3407, 3407-3408 (Vernon), are new provisions clarifying the availability of inmate information. Section 552.131 provides that "[e]xcept as provided by . . . section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by . . . the department." Section 552.029 provides:

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<sup>1</sup> This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

Notwithstanding Section . . . 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

. . .

(8) basic information regarding the death of an inmate in custody[.]

Sections 552.131 and 552.029 specify categories of inmate information that are “subject to required disclosure,” exclude certain other categories from their ambit, and except all unspecified categories of inmate information from disclosure. We are of the opinion that by detailing the categories of inmate information that can be released, the legislature intended that all other inmate information not be released. Therefore, with the exception of the information specified as subject to public disclosure in section 552.029 and the information excluded by section 552.131(b)(statistical information and information about inmates sentenced to death), all information obtained or maintained by the department about an inmate who is confined in a facility operated by or under a contract with the department is made confidential by Government Code section 552.131. In this instance, the requested information pertains to the death of an inmate in custody, so section 552.029(8) requires release of the “basic information.”

Although the legislature did not define “basic information” for the purposes of section 552.029(8), the legislative history reflects that the phrase was chosen because of its use in section 552.108(c) of the Government Code, which requires the disclosure of “basic information about an arrested person, an arrest, or a crime.” Hearing on H.B. 1379 before the House Committee on Corrections, 76<sup>th</sup> Leg., R.S. (April 6, 1999) (remarks of Carl Reynolds, General Counsel, Texas Department of Criminal Justice). We therefore interpret “basic information regarding the death of an inmate in custody” to include the date, time, and place of the incident which resulted in the death; the date, time, and place of the death itself; the names of inmates and officials of the department who were directly involved; a brief narrative of the incident; a description of the cause of death; and information regarding any criminal charges or disciplinary actions that resulted from the incident. *Compare Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App. – Houston [14<sup>th</sup> Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *Open Records Decision No. 127* (1976). You must release such “basic information,” unless it is confidential under *Ruiz*. In addition, the department must release the autopsy report, including photographs, pursuant to section 11 of article 49.25 of the Code of Criminal Procedure.<sup>2</sup> The department must withhold the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

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<sup>2</sup>The Public Information Act’s exceptions to required disclosure do not apply to information expressly made public by other statutes. *Open Records Decision No. 525* (1989). We note that Part I of the custodial death report is also public information pursuant to article 49.18 of the Code of Criminal Procedure and must be released. *See Open Records Decision No. 521* at 5 (1989).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 131070

Encl. Submitted documents

cc: Lanny Nevil  
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(w/o enclosures)